

SETTLEMENT OF CLAIMS

Exchange of notes at Washington November 10 and 26, 1845

Entered into force November 26, 1845

*Terminated upon fulfillment of its terms*¹

4 Miller 779

The British Minister to the Secretary of State

WASHINGTON 10 November 1845

SIR, With reference to what I have already had the honor verbally to communicate to you on the subject of a mutual settlement of certain claims which have been for some time pending between the two Governments with the particulars of which you are already fully acquainted—I now beg leave to place in your hands the enclosed Memorandum explaining the considerations which have induced Her Majesty's Government to suggest the proposed arrangement.

I venture to hope that the views of Her Majesty's Government upon this matter will meet with the cordial concurrence of the Government of the United States.

I take advantage of this opportunity, to renew to you, Sir, the assurance of my high consideration.

R. PAKENHAM

The Hon^{ble} JAMES BUCHANAN

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[ENCLOSURE—MEMORANDUM]

Her Majesty's Government have for some time past had under their anxious consideration the claim of certain British Merchants carrying on trade with the United States for a return of the excess of duties levied on goods imported by them into the United States under the Tariff of 1842,² which claim was first brought to the notice of the United States Government by Mr Fox's note of 8, January 1844.

¹ Payment of claims authorized by act of May 8, 1846 (9 Stat. 6).

² 5 Stat. 548.

The attention of Her Majesty's Government has been no less anxiously directed to the claim advanced by citizens of the United States against the British Government for a return of the excess of duties levied on certain parcels of rough rice imported into England some years since.

These cases which have formed the subject of frequent representations between the two Governments are in many respects parallel, but especially in the essential feature of their connection with the Provisions contained in the 2^d Article of the Commercial Convention of 1815 ³ between Great Britain and the United States to which it is mutually affirmed that the levying of the duties complained of on both sides is directly opposed.

Both the cases have been repeatedly and energetically discussed by the respective Parties but hitherto without any visibly nearer approach to a satisfactory result than when they were first opened.

In each case the Treaty is appealed to with confidence by one Party and its applicability denied by the other. The sums respectively involved are large, and that consideration coupled with the not unreasonable doubts which hang over the subject in both cases seem to justify the tenacity with which each party has defended its own cause and has refused to concede any thing to its opponent.

Under these circumstances it appears to Her Majesty's Government that it would be wise on the part of both Governments to consider whether in this involved and unpromising state of the matter a settlement of it upon equal terms might not be agreed to.

Supposing the United States Government to concur in the propriety of effecting such a settlement, it would seem desirable to avoid reopening discussion on the merits of either of the contested cases but to assume that both are equal, that both present themselves under the same aspect of alleged violation of Treaty engagements strictly and literally taken, and that both have been maintained with equal sincerity and good faith by the respective Parties.

Such is the mode in which the British Government is prepared to treat this matter in case the Government of the United States should signify their concurrence therein, and considering the irritation which protracted discussion on points so serious as the alleged infraction of Treaty stipulations is apt to engender even in the minds of Governments and Nations whose interest and wish it is to maintain the best understanding with each other, Her Majesty's Government trust that the Government of the United States may acquiesce in the mode of adjustment thus proposed.

Should this be the case it might be well that in the first place it should be mutually admitted and declared that in the respective acts which gave rise to the controversies which have arisen between the two Governments the view taken by both Parties respectively is mutually believed and acknowl-

³ Convention signed at London July 3, 1815 (TS 110, *ante*, p. 50).

edged to have been conscientiously entertained and supported; that nevertheless both Parties admit that their respective views may have been erroneous and that under this admission each is willing to respect the claim to compensation put forward by the opposite party, that seeing however the reasonable doubt which may still be considered to hang over each claim and also that if real injury has resulted from the acts of either Party it has arisen from error and not from intention, each Government shall forego all claims to arrears of interest on the sums which may be found respectively due, and that with this explicit agreement these sums having been first clearly ascertained to the satisfaction of both Governments which shall mutually afford every facility for that object, shall be forthwith paid by each Government to the other for distribution to the claimants, each Government being from the moment that such payment shall have been effected, entirely absolved from all further responsibility on the part of the claimants of the opposite Party.

It appears to Her Majesty's Government that each Government would thus be placed on a footing of entire parity and that both may agree to carry out such an arrangement without any sacrifice of national credit.

This proposal to be considered as conditional, in every respect;—if not accepted on the terms in which it is offered, things would of course return to their original position.

The Secretary of State to the British Minister

DEPARTMENT OF STATE,
Washington, 26th Nov^r, 1845

The Rt. Hon^{ble} R. PAKENHAM,
Esq, Esq, Esq.

SIR: I have had the honor of receiving your note of the 10th instant, together with "the memorandum" presenting the views of Her Britannic Majesty's Government in relation to the mutual claims of the two Governments for refunding the excess of duties which has been levied in the ports of each, in violation of the second article of the Commercial Convention between the two countries, of the 3^d of July, 1815. The memorandum has been submitted to the President; and I am pleased to inform you that it has received his cordial approbation. He is perfectly willing to terminate the pending questions between the two Governments under this convention, on the terms proposed by the British Government. Indeed, you are aware that, from the very moment I first examined the question, I believed that the claim of the British Government was well-founded, and rested upon the same basis with that of the United States.

The only remaining obstacle is to adjust the claims of the respective Governments on each other according to the principles in which they both concur. It may save trouble in the end if this should be done in the beginning.

The second article of the convention provides that "no higher or other duties shall be imposed on the importation into the United States of any articles the growth, produce, or manufacture of His Britannic Majesty's territories in Europe, and no higher or other duties shall be imposed on the importation into the territories of His Britannic Majesty in Europe of any articles the growth, produce, or manufacture of the United States, than are or shall be payable *on the like articles*, being the growth, produce, or manufacture of any other foreign country." No difficulty exists in specifying the claim of the United States under this provision, because it is confined to the single article of rough rice. Not so the British claim. This is now indefinite; and it is highly desirable that it should be rendered specific, by an enumeration of the articles on which an excess of duty has been levied under the tariff act of 30 August, 1842.

Under the 25th section of this act, it is provided "that nothing in this act contained shall apply to goods shipped in a vessel bound to any port of the United States, actually having left her last port of lading eastward of the Cape of Good Hope, or beyond Cape Horn, prior to the first day of September, 1842; and all legal provisions and regulations existing immediately before the thirtieth day of June, 1842, shall be applied to importations which may be made in vessels which have left such last port of lading eastward of the Cape of Good Hope, or beyond Cape Horn, prior to said first day of September, 1842."

Now no difficulty can exist as to what vessels are embraced by the British claim. It is freely admitted that in regard to these they shall be the same as though this section of the tariff act had expressly embraced vessels "bound to any port of the United States, actually having left their last port of lading" in any of Her "Britannic Majesty's territories in Europe" prior to the first day of September, 1842; thus placing them on the identical footing with vessels from "eastward of the Cape of Good Hope or beyond Cape Horn."

The designation of such articles imported in these vessels as are protected from increased duties by the convention between the two countries is the only matter of difficulty. According to this convention and the tariff act, they must be "like articles", "the growth, produce, or manufacture of Her Britannic Majesty's territories in Europe", to those which had been imported into the United States from "any other foreign country," "eastward of the Cape of Good Hope or beyond Cape Horn, prior to the said first day of September, eighteen hundred and forty-two."

I invite you, Sir, to furnish me a list of these articles; and in order to enable you to comply with this request, all the information on the subject in possession of the Treasury Department shall be most cheerfully communicated to you.

The phrase "eastward of the Cape of Good Hope or beyond Cape Horn," has received a settled construction by long practice under our revenue laws.

It does not embrace any port of Europe, or any port of Asia or Africa upon the Mediterranean.

I avail myself of this occasion to offer you renewed assurances of my distinguished consideration.

JAMES BUCHANAN

P.S.—I have the honor of communicating to you, herewith, a copy of the opinion of the Secretary of the Treasury on the subject of this note.⁴

⁴ For text, see 4 Miller 785.